

**JUL 07 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

ABBOUDS' MCDONALD'S LLC,

Plaintiff - Appellant,

v.

MCDONALD'S CORPORATION,

Defendant - Appellee.

No. 05-36032

D.C. No. CV-04-01895-MJP

MEMORANDUM\*

Appeal from the United States District Court  
for the Western District of Washington  
Marsha J. Pechman, District Judge, Presiding

Argued and Submitted June 5, 2006\*  
Seattle, Washington

Before: BEEZER, TALLMAN, and BYBEE, Circuit Judges.

Abbouds' McDonald's, LLC, an organization of commonly owned McDonald's franchises in the Seattle area, sued McDonald's Corporation ("McDonald's") under federal and state law alleging a bid-rigging conspiracy that prevented Abbouds' McDonald's from acquiring new franchises. The district

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

court granted McDonald's motion for summary judgment and dismissed all of Abbouds' McDonald's claims. Abbouds' McDonald's appeals the dismissal.

We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm the district court's dismissal because Abbouds' McDonald's lacks antitrust standing.

The parties are familiar with the facts of the case. We need not repeat them here.

We review the district court's grant of summary judgment de novo to determine, viewing the evidence in the light most favorable to the nonmoving party, whether there are any genuine issues of material fact and whether the district court applied substantive law correctly. *United States v. City of Tacoma*, 332 F.3d 574, 578 (9th Cir. 2003).

Factors for determining whether a plaintiff who has borne an injury has antitrust standing include: (1) the nature of the plaintiff's alleged injury, (2) the directness of the injury, (3) the speculative nature of the harm, (4) the risk of duplicative recovery and (5) the complexity in apportioning damages. *Am. Ad Mgmt., Inc. v. Gen. Tel. Co. of Cal.*, 190 F.3d 1051, 1054 (9th Cir. 1999); *accord Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 535-37 (1983). “[A] showing of antitrust injury is necessary, but not

always sufficient, to establish standing.” *Am. Ad Mgmt.*, 190 F.3d at 1054 (quoting *Cargill, Inc. v. Monfort of Colo., Inc.*, 479 U.S. 104, 110 n.5 (1986)).

“To show antitrust injury, a plaintiff must prove that his loss flows from an anticompetitive aspect or effect of the defendant’s behavior, since it is inimical to the antitrust laws to award damages for losses stemming from acts that do not hurt competition.” *Rebel Oil Co. v. ARCO*, 51 F.3d 1421, 1433 (9th Cir. 1995) (citing *ARCO v. USA Petroleum, Inc.*, 495 U.S. 328, 334 (1990)). “[T]he antitrust laws are only concerned with acts that harm ‘allocative efficiency *and* raise[] the price of goods above their competitive level or diminish[] their quality.’” *Pool Water Prods. v. Olin Corp.*, 258 F.3d 1024, 1034 (9th Cir. 2001) (quoting *Rebel*, 51 F.3d at 1433) (emphasis and second and third alterations in original).

Abbouds’ McDonald’s recognizes that a competitor generally lacks standing to challenge a bid-rigging conspiracy because the competitor suffers no antitrust injury. *See Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488 (1977) (“[A]ntitrust laws . . . were enacted for ‘the protection of *competition*, not *competitors*.’” (quoting *Brown Shoe Co. v. United States*, 370 U.S. 294, 320 (1962))). Abbouds’ McDonald’s, however, argues they have standing because the bid-rigging conspiracy included conduct aimed at excluding them, the competitor, from the market in question. McDonald’s has the right, pursuant to a standard

contract term of its franchise agreement, to acquire a franchise by matching the highest bid. Because the Schultz estate received the best price for the available franchises, the only injury to Abbouds' McDonald's would arise from its inability to own five additional McDonald's stores. Abbouds' McDonald's fails to demonstrate that the defendant's alleged conduct had any effect on consumer welfare. *See Pool Water Prods.*, 258 F.3d at 1034. Abbouds' McDonald's alleged injury is not cognizable because it is not "of the kind the antitrust laws were meant to protect against." *Id.* at 1036. Abbouds' McDonald's lacks antitrust standing.

Abbouds' McDonald's state law claims under the Washington Consumer Protection Act fail as well because McDonald's conduct did not affect the public interest. *See Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 719 P.2d 531, 533, 538 (Wash. 1986).

**AFFIRMED.**